

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 371 of 1997

with

SPECIAL CIVIL APPLICATION No 4911 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAURASHTRA CHEMICALS KAMDAR SANGH

Versus

BIRLA VXL LTD.

Appearance:

1. Special Civil Application No. 371 of 1997
MR HB SHAH for Petitioners
MR KS NANAVATI for Respondent No. 1
MR ND GOHIL ASSTT.GOVERNMENT PLEADER
for Respondent Nos.2 & 4
MR SR SHAH for Respondent No. 3
2. Special Civil ApplicationNo 4911 of 1992
MR VASAVADA for Petitioners
MR KS NANAVATI for Respondent No. 1
MR ND GOHIL ASSTT. GOVERNMENT PLEADER
for Respondent Nos. 2 & 3.
MR SR SHAH for Respondent No. 3

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 02/12/97

COMMON ORAL JUDGEMENT

Heard Mr. H.B.Shah for the petitioner in Special Civil Application No. 371 of 1997. Mr. Vasavada is supposed to be appearing for the petitioners in Special Civil Application No. 4911 of 1992. Both these petitions are similar petitions. Mr. Desai appears for M/s. Saurashtra Chemicals which is an employer. Mr. Gohil appears for State of Gujarat and Director of Medical Services, ESI Scheme and Mr. S.R.Shah appears for the E.S.I. Corporation.

These two petitions are filed to seek medical facilities to the ensured employees working under Saurashtra Chemicals Limited. His submission is that they are covered under the scheme and are entitled to various benefits which are permitted under the E.S.I.Act, 1948 but are not being provided the same. On behalf of the Director, E.S.I.Scheme, an affidavit in reply has been filed in Spl.C.A.No. 371 of 1997 stating that there is a serious problem of law and order in Porbandar area, because of which all the dispensaries at that center have been closed down in view of the difficulties faced by medical and para-medical staff. Medical and para-medical staff felt threatened with respect to their life, they were not allowed to work peacefully and it led to non-functioning of these dispensaries. It is also stated in the affidavit that way back in August, 1992, the proposal to exempt Porbandar under E.S.I.Act is made by the Director of E.S.I.Scheme, and the same is pending consideration.

In view of the averments made in the petition and the submissions made by all concerned advocates, my brother Calla, J. by his order dt. 27/8/1997 directed that the parties concerned will sit together and prepare workable Scheme. Thereafter a report has been filed which was signed by Mr.N.S.Vora,I/c.Director, Medical Services, ESI Scheme, Ahmedabad and Mr. Vijay Kumbhare, Regional Director, ESI Corporation, Gujarat dt. 19/9/97. The report suggested in Para 2 that the employer may open Utilisation Dispensary, where Medical and para-Medical staff will be posted by the employer and the payment for running the dispensary will be made to the employer as per rules. Mr. Dave appearing for the employer has expressed inability of the employer to agree with this

suggestion and affidavit to that effect has been filed by Mr. S.P.Shrivastav, Deputy General Manager, Personnel and in Para 9, it is stated that when the Company is making necessary contributions, no liability be fastened on the employer. In view of this situation, nothing can be done in this matter, except that the State Government to decide the proposal received from the Deputy Director, ESI Scheme expeditiously, preferably by the end of March, 1998. Liberty to the parties to apply in the event of difficulty. Inasmuch as the proposal is pending since August, 1992 onwards, it is desirable that it should be decided expeditiously. It will be so decided after consultation with ESI Corporation and all concerned in accordance with relevant rules and conditions.

3. In the meanwhile and until decision is taken, some arrangement is to be made for the employees. It is stated in Para 8 of the affidavit of the Deputy Director, ESI Scheme, that Civil Hospital, Porbandar is providing medical treatment to the employees or to anyone else also. The employees concerned are free to avail all these facilities and so far as reimbursement of the expenses is concerned, they will fill in necessary form with proper certificate issued by Competent Medical Officer of Civil Hospital and the concerned officer of the employer.

With the aforesaid directions, these petitions are disposed of with no order as to costs. Rule absolute to the above extent.

(ccs)